IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 134 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
R P GAJJAR FAMILY TRUST - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 12/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1.The Income-Tax Appellate Tribunal, Ahmedabad Bench-”C”

has referred the following question for the opinion of this Court under Section 256(1) of the Income-Tax Act, 1961.

> “Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust deserved to be assessed as a specific trust?”

2. The assessee is a private family trust. It came into existence in terms of Trust deed dated October 27, 1990. The trustees are authorized to carry on business on behalf of and for the benefit of the beneficiaries. In all six beneficiaries were named in the trust deed.

3. The proviso to clause 2(b) of the trust deed is as follows :-

> “Provided that in case any of the beneficiaries is not alive at the time of distributing the income for any year, the share of income pertaining to the deceased shall be distributed amongst the other surviving beneficiaries, as the case may be, in equal proportion. If all the beneficiaries are not alive at the date of distribution of income, the

income shall be allocable to their heirs as per law of intestate succession."

4. For the assessment year 1984-85, the assessee filed return of income and claimed that it was a specific trust. However, the Assessing Officer held that it was not possible, as on the date of execution of the trust deed, to identify the number of beneficiaries or to ascertain their shares, at the end of each previous year on account of debt or debts of the beneficiaries and as the income of the trust was not specifically receivable on behalf of or for the benefit of the beneficiaries and the individual shares of the beneficiaries on whose behalf or for whose benefit such income or part thereof was receivable were indeterminate or unknown within the meaning of section 164(1) of the Act, the income of the trust was liable to be taxed on maximum marginal rate as provided in Section 164 of the Act.

5. In appeal, CIT (Appeals) confirmed the view of the Assessing Officer. However, the Tribunal notified that in Clause 2(b) of the deed of settlement dated October 27, 1980, six beneficiaries were mentioned and as the

beneficiaries as well as their respective shares were specified, the trust which was specific did not become discretionary in nature, giving rise to the instant reference.

6. Though the assessee is duly served, it has neither appeared through its constituted agent nor through a lawyer. This Court has heard Ms. Monaben M. Bhatt, learned counsel for the revenue at length and in great detail and also considered the facts of the case.

7. The question whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee-trust deserved to be assessed as a specific trust will have to be answered in the light of proviso to Clause 2(b) of the trust deed which is quoted above. A bare reading of the deed of settlement makes it very clear that there were six beneficiaries and it is provided under Clause 2(b) of the deed that the net balance of the income remaining after providing for contingencies mentioned in Clause (a) should be distributed amongst the beneficiaries at the close of every accounting year in the proportions mentioned against their names. Thus, there is no manner

of doubt that the shares of the beneficiaries are specified in the deed of the Trust. Further, proviso to Clause 2(b) inter alia provides that in case any of the beneficiaries is not alive at the time of distributing the income for any year, the share of income pertaining to the deceased shall be distributed amongst other surviving beneficiaries, as the case may be, in equal proportion. Thus, the distribution of income for any year on death of any of the beneficiaries is also specified and it is provided that the share of income pertaining to the deceased beneficiary shall be distributed amongst the surviving beneficiaries in equal proportion. This part of the proviso is very specific and does not confer any discretion on the trustees as to how the income of a beneficiary, who has died should be distributed amongst the surviving beneficiaries. As far as second part of the proviso is concerned, it is provided that if all the beneficiaries are not alive at the date of distribution of the income, the income shall be allocable to their heirs as per law of intestate succession. The law of intestate succession also specifies the share of heirs, and therefore, the second part of the proviso also cannot be regarded as vesting

discretion in the trustees as to how and in which proportion the income of the beneficiaries should be distributed if all of them died.

8. In Commissioner of Income-Tax V/s. Gulabchand Mehtab Bai Kasliwal Family Trust 254 ITR 336, a trust deed specified that on the death intestate of a beneficiary her share was to be allocated to her heirs whatsoever their number and whatsoever their proportion of share in her estate. On construction of the said clause of deed, it is held that the share given to the beneficiary had, on her death, to be distributed amongst her heirs according to the personal law of the deceased and merely because one of the known beneficiaries, whose share was specified died and such beneficiary's interest devolved on the deceased's heir or heirs, the specified trust did not become a trust in which the shares of the beneficiaries were indeterminate or unknown. On interpretation of the proviso to Clause 2(b) of the trust deed, this Court is of the opinion that it is not left to the entire discretion of the trustees to distribute amongst the beneficiaries the net income of the trust in such proportions on death of a beneficiary or deaths of all

the beneficiaries. Therefore, the Tribunal was justified in treating the assessee as a specific trust. Accordingly, the question referred to this Court for its opinion is answered in the affirmative i.e. against the revenue and in favour of the assessee. The reference, accordingly, stands disposed of. There shall be no order as to costs.

(J.M.PANCHAL,J.)

(BANKIM N. MEHTA,J.)

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